

Lease agreements that contain purchase options that are equal to the fair market value of the tangible personal property at the end of the lease term are considered true leases, and the lessors incur Use Tax liability on their cost price of tangible personal property purchased for rental purposes. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

March 21, 2000

Dear Xxxxx:

This letter is in response to your letter dated January 17, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

- 1) We are a registered Illinois auto dealer
- 2) We sold several cars to COMPANY in CITY, Illinois
- 3) COMPANY (lessor) leased them to the MILITARY (lessee)
- 4) The cars were shipped directly from the BUSINESS plant to a dealer located in STATE
- 5) The vehicles were registered in STATE to MILITARY. The individual in charge in STATE is PERSON who may be reached at ##### if you need that information.
- 6) Since STATE does NOT require an in-state address or STATE title to register a vehicle in STATE, we applied for an Illinois title ONLY in the name of COMPANY in CITY, Illinois. This kept the title where it belonged and allowed a STATE registration.
- 7) The sales tax ST-556 was checked 'exempt sale' in Section 5, box A for out-of-state purchaser-lessee. Box C was not checked since while the MILITARY is certainly exempt in Illinois, it's rather unlikely that the MILITARY Recruiting Office in CITY/STATE2 has an Illinois 'E' number which is required if that box is checked.
- 8) The vehicle was never registered in Illinois and any applicable taxes, fees, license charges, etc. were paid in STATE.
- 9) We were assessed the taxes on the vehicle anyway on a RA-52-08.

A copy of all of the appropriate Illinois documents are attached. We obviously do not have a copy of the STATE documents since we were not involved in the STATE registration.

It is our belief that this is a tax exempt sale. The reasons for this are as follows:

- A) Illinois does not require collection of taxes from the lessor if the vehicle is leased to a tax-exempt agency or an out-of-state lessee with foreign registration.
- B) Common sense dictates that the MILITARY is tax-exempt even if it does not have an Illinois exemption number for its STATE offices.
- C) On the Illinois Dept. of Revenue Internet instructions, Part 2 Factory Deliveries, The question is posed 'Under what circumstances is a sales or use tax not due on a leased item?' One of the answers stated is when 'the lessee will title OR REGISTER the item in another state.' While the instructions continue to state that the name and out-of-state address must appear on the ST-556, Section 1, there is really no where to put it since the ST-556 must match the title, which is an Illinois title. Further, while the instructions state that 5A must be completed, there is only room for an Illinois drive-away permit number or an out-of-state license, neither of which apply in this situation since the cars were shipped directly to STATE from the factory.
- D) While the MILITARY is certainly exempt as a governmental body, 5C could not be completed because of the exemption number requirement and the fact that the Internet instructions state that the ST-556 MUST contain the name of the lessor and lessee and the Illinois address of the lessee.

Your assistance with this matter is greatly appreciated. While it is fairly clear to us that this transaction is tax-exempt, the problem appears to be one where the form simply does not accommodate the transaction. While we have attempted to convey all of this through the normal state channels, it appears that the only way it will get resolved is through a statement from your office.

Again, while there is currently only one vehicle in question, we sell about 100 of these vehicles per year and it can quickly turn into a nightmare so anything you can do to expedite the answer would be appreciated. If you have any questions or I can be of further assistance, my extension is #####. Thank you.

For general informational purposes we enclose a copy of 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes. Lessors are subjected to a Use Tax on their cost price of tangible personal

property that they acquire to use by leasing under true leases in Illinois. The only exception is automobiles rented for one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased and lessors incur Use Tax liability on their cost price of such property, 86 Ill. Adm. Code 130.220(c). Except for short-term automobile rentals, there is no tax due upon rental receipts in Illinois.

As a general proposition, lessors who execute leases with lessees exempt from paying sales tax on purchases of tangible personal property for their own use (e.g. exclusively religious, charitable or educational organizations or units of government) receive no pass through treatment and lessors owe Use Tax on their cost price of the rental property. The Use Tax liability remains on the lessor notwithstanding the status of the lessee. See Continental Illinois Leasing Corp. v. Department of Revenue, 108 Ill. App. 3d 583 (First Dist., 1982).

It is the position of the Illinois Department of Revenue that a lessor in Illinois who purchases a vehicle and then receives a title to that vehicle from the Illinois Secretary of State is exercising an incident of ownership over that vehicle sufficient to subject the lessor to Use Tax unless it can document an exemption.

Please be informed that recent legislation creates some limited exceptions to the general rule that prohibits pass through treatment when lessors lease items of tangible personal property to exclusively religious, charitable or educational organizations or units of government. There can be an exemption from Retailers' Occupation Tax for sales of tangible personal property to lessors who lease that property to governmental bodies. In order to qualify for the exemption, there are three conditions that must be met. They are as follows:

1. the tangible personal property must be purchased for lease to governmental bodies under leases that have been executed or are in effect at the time of purchase;
2. the leases must be for a period of one year or longer; and
3. the leases must be to governmental bodies that have active tax exemption identification numbers issued by the Department under Section 1g of the Retailers' Occupation Tax Act.

This exemption is not available for leases to governmental bodies under lease terms of less than one year. We are not able to tell from the information in your letter if your transaction would qualify for this exemption. For further information see the enclosed copy of 86 Ill. Adm. Code 130.2012. Illinois automobile dealers who qualify for this exemption are to report a sale to a lessor by listing the names of both the lessee and lessor in Section 1 of the ST-556 and also providing the lessee's active tax exemption identification number (E Number) in Section 5, Box C. Regarding your

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questions about the use of the tax exemption identification number that the Illinois Department of Revenue issued to the MILITARY, you can direct such inquiries to the Department's Local Government Services Bureau at (217) 782-6957.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.